

**INTERAGENCY AGREEMENT
Agreement No. 20140289**

between

OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION
Old Capitol Building, P.O. Box 47200
Olympia, WA 98504-7200

and

**WASHINGTON STATE UNIVERSITY
DBA WSU ENERGY PROGRAM**
905 Plum Street SE
Olympia, WA 98504-3165

Federal Identification #91-6001108

THIS AGREEMENT is made and entered into by and between the Washington State University, hereinafter referred to as "WSU Energy Program," and the Office of Superintendent of Public Instruction, hereinafter referred to as "OSPI."

PURPOSE OF THIS AGREEMENT

This Agreement is necessary for the successful implementation of the School Facilities and Organization 2013-2015 Energy Grant Program. WSU Energy Program shall provide third-party engineer review and comments on school district investment grade audits (IGA) submitted as part of their energy grant application.

THEREFORE, IT IS MUTUALLY AGREED THAT:

STATEMENT OF WORK

The WSU Energy Program shall furnish the necessary personnel, equipment, material and/or services and otherwise do all things necessary for or incidental to the performance of the work set forth below:

- WSU's Energy Program energy engineers shall review and comment on up to fifteen (15) American Society of Heating, Refrigeration, and Air-Conditioning Engineers (ASHRAE) Level III IGA's prepared by energy service companies or energy engineering firms for Washington school districts.

- The WSU Energy Program review shall include:
 1. Does the scope of work in the application make sense given the IGA results?
 2. Are there glaring errors in calculations?
 3. Is the cost analysis within industry standards?
 4. Is the new equipment scoped appropriate for the use?
- WSU Energy Program shall handwrite comments on the documents, or enter comments into a spreadsheet that clearly correlates the comment with the specific IGA and section.
- WSU Energy Program shall complete all of the review and comment work between February 25, 2014, and March 11, 2014.
- WSU Energy Program review engineers shall be available for review comment questions from the OSPI grant scoring team through March 30, 2014.
- WSU Energy Program shall return each IGA individually to OSPI as the review is completed.
- OSPI will deliver the IGAs to WSU Energy Program in entirety, as soon as they are available, but no later than February 24, 2014.
- Nancy Johns, Coordinator, School Facilities and Organization, is the OSPI staff person to answer WSU Energy Program questions during the IGA review.

PERIOD OF PERFORMANCE

Subject to its other provisions, the period of performance of this Agreement shall commence on February 24, 2014, or date of execution, whichever is later, and be completed on March 30, 2014, unless terminated sooner as provided herein.

PAYMENT

Compensation for the work provided in accordance with this Agreement has been established under the terms of RCW 39.34. The parties have determined that the cost of accomplishing the work herein will not exceed a total of Nine Thousand dollars (\$9,000), per the schedule below.

| WSU Staff | Hourly Rate |
|------------------------|--------------------|
| Senior Energy Engineer | \$100 |
| Energy Engineer | \$ 85 |
| Project Manager | \$98 |
| Division Manager | \$120 |

The hourly rates provided include an eight percent (8%) facilities and administration fee.

Payment for satisfactory performance of the work shall not exceed this amount unless the parties mutually agree to a higher amount.

BILLING PROCEDURE

The WSU Energy Program shall submit one invoice to Nancy Johns when all the work has been completed. The invoice shall include the Agreement number and document to the Superintendent's designee's satisfaction a description of the work performed and payment requested. Within approximately thirty (30) working days of the Superintendent's designee receiving and approving the invoice, payment will be mailed or electronically transferred to the WSU Energy Program by Agency Financial Services, OSPI. Upon expiration of the Agreement, any claim for payment not already made shall be submitted within thirty (30) days after the expiration date or the end of the fiscal year, whichever is earlier.

AGREEMENT ALTERATIONS AND AMENDMENTS

This Agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

ASSIGNMENT

The work to be provided under this Agreement, and any claim arising thereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

CONTRACT MANAGEMENT

The following shall be the contact person for all communications and billings regarding the performance of this Agreement.

| WSU Energy Program | OSPI |
|---|--|
| Edwin Valbert Manager Plant Operations Support 905 Plum Street SE Olympia, WA 98504-3165 Phone: (360) 956-2055 Fax: (360) 956-2010 Email: ValbertE@energy.wsu.edu | Nancy Johns Coordinator Old Capitol Building, P.O. Box 47200 Olympia, WA 98504-7200 Phone: (360) 725-4973 Fax: (360) 586-3946 Email: nancy.johns@k12.wa.us |

DISPUTES

In the event that a dispute arises under this Agreement, it shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, contract terms and applicable statutes and rules and make a determination of the dispute. The determination of the Dispute Board shall be final and binding on the parties hereto.

GOVERNANCE

This Agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws.

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable state and federal statutes and rules
- Statement of work
- Attachments
- Any other provisions of the Agreement, including materials incorporated by reference

INDEPENDENT CAPACITY

The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

RECORDS MAINTENANCE

The parties to this Agreement shall each maintain books, records, documents and other evidence which sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the services described herein. These records shall be subject to inspection, review or audit by personnel of both parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this Agreement will be retained for six years after expiration and the Office of the State Auditor, federal auditors, and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this period.

Records and other documents, in any medium, furnished by one party to this Agreement to the other party, will remain the property of the furnishing party, unless otherwise agreed. The receiving party will not disclose or make available this material to any third parties without first giving notice to the furnishing party and giving it a reasonable opportunity to respond. Each party will utilize reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties.

RESPONSIBILITIES OF THE PARTIES

Each party to this Agreement hereby assumes responsibility for claims and/or damages to persons and/or property resulting from any act or omission on the part of itself, its employees, its officers, and its agents. Neither party assumes any responsibility to the other party for the consequences of any claim, act or omission of any person, agency, firm, or corporation not a party to this Agreement.

RIGHTS IN DATA

Copyright in all material created by WSU Energy Program and paid for by OSPI as part of this Agreement shall be the property of the State of Washington. Both OSPI and WSU Energy Program may use these materials, and permit others to use them, for any purpose consistent with their respective missions as agencies of the State of Washington. This material includes, but is not limited to: books, computer programs, documents, films, pamphlets, reports, sound reproductions, studies, surveys, tapes, and/or training materials. Material which WSU Energy Program provides and uses to perform this Agreement but which is not created for or paid for by OSPI shall be owned by WSU Energy Program or such other party as determined by Copyright Law and/or WSU Energy Program's internal policies; however, for any such materials, WSU Energy Program hereby grants (or, if necessary and to the extent reasonably possible, shall obtain and grant) a perpetual, unrestricted, royalty free, non-exclusive license to OSPI to use the material for OSPI internal purposes.

SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

TERMINATION

Either party may terminate this Agreement upon thirty (30) days' prior written notification to the other party. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

TERMINATION DUE TO FUNDING LIMITATIONS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to normal completion, OSPI may, without advance notice and without liability for damages, terminate this Agreement by providing written notice to WSU Energy Program. However, OSPI will be liable for payment for work performed under this agreement up to the date of termination. The termination shall be effective on the date of the termination notice.

TERMINATION FOR CAUSE

If for any cause, either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within fifteen (15) working days. If failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.

TERMINATION PROCEDURE

Upon termination of this Agreement, OSPI, in addition to other rights provided in this Agreement, may require WSU Energy Program to deliver to OSPI any property specifically produced or acquired for the performance of such part of this Agreement as has been terminated.

OSPI shall pay to WSU Energy Program the agreed upon price, if separately stated, for completed work and services accepted by OSPI and the amount agreed upon by WSU Energy Program and OSPI for (a) completed work and services for which no separate price is stated, (b) partially completed work and services, (c) other property or services which are accepted by OSPI, and (d) the protection and preservation of the property, unless the termination is for cause, in which case OSPI shall determine the extent of the liability. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause for this Agreement. OSPI may withhold from any amounts due to WSU Energy Program such sum as OSPI determines to be necessary to protect OSPI against potential loss or liability.

The rights and remedies of OSPI provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law under this Agreement.

After receipt of a notice of termination, and except as otherwise directed by OSPI, WSU Energy Program shall:

- a. Stop work under this Agreement on the date and to the extent specified, in the notice;
- b. Place no further orders or subcontractors for materials, services or facilities except as may be necessary for completion of such portion of the work under the Agreement that is not terminated;
- c. Assign to OSPI, in the manner, at the times, and to the extent directed by OSPI, all rights, title, and interest of WSU Energy Program under the orders and subcontracts in which case OSPI has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- d. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of OSPI to the extent OSPI may require, which approval or ratification shall be final for all the purposes of this clause;
- e. Transfer title to OSPI and deliver, in the manner, at the times and to the extent as directed by OSPI, any property which, if the Agreement had been completed, would have been required to be furnished to OSPI;
- f. Complete performance of such part of the work not terminated by OSPI; and
- g. Take such action as may be necessary, or as OSPI may direct, for the protection and preservation of the property related to this Agreement which, in is in the possession of WSU Energy Program and in which OSPI has or may acquire an interest.

WAIVER

A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Agreement.

ALL WRITINGS CONTAINED HEREIN

This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement.

Washington State University

Superintendent of Public Instruction
State of Washington

Christine R. Hoyt

Sheryl Turner

Signature

Title

Sheryl Turner, Contracts Administrator

Christine R. Hoyt
Contracts Manager
Washington State University

1-14-14

February 14, 2014

Date

Date

Who certifies that he/she is the Contractor identified herein, OR a person duly qualified and authorized to bind the Contractor so identified to the foregoing Agreement.

Approved as to FORM ONLY
by the Assistant Attorney General